THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 9652 OF 2005

30th December, 2005

Between:

The Board of Education (Governing Council),

M.B.Schools, M.B.Mission Compound, Mahabubnagar.

…Petitioner

A N D

1. The Government of Andhra Pradesh, rep. by its

Secretary School Education (PS-2) Department, Secretariat,

Hyderabad and others.

…Respondents

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W.P.No. 9652 OF 2005

O R D E R :

This writ petition has been filed challenging the proceedings of the Regional Director of School Education in Rc.No.9131/A2/2004, dated 20-03-2005 whereby and where under the proposal for approval of the selection of the candidates of certain posts in the petitioner schools came to be rejected.

2. The facts of the case giving rise to filing of this writ petition in brief are:

The petitioner institution is a minority educational institution running various schools in Mahaboobnagar, Nalgonda, Ranga Reddy and Hyderabad District. The petitioner submitted application to fill up 34 vacancies in teaching and non-teaching posts. The District Educational Officer-4th respondent granted permission to fill up 30 posts of teaching and non-teaching as against 34 posts. A further direction has been given to the petitioner by the 4th respondent to fill up aidded teaching and non-teaching posts as per the procedure laid down in G.O.Ms. No.1, dated 1-1-1994, G.O.Ms.No.75, dated 23-9-2002 and the instructions issued by the Commissioner and Director of School Education of A.P. Hyderabad. The District Educational Officer –4th respondent appointed a panel of subject experts comprising four persons and appointed the Deputy Educational Officer, Mahaboobnagar as his nominee under proceedings dated 5-9-2003.

3. Notifications have been issued calling for applications from the eligible candidates. Written examination was conducted on 12-9-2003 and selection process was over on that day itself. List of selected candidates was sent to the Regional Joint Director of School Education, Hyderabad for approval. In the

meanwhile some complaints were made to the District Collector by unsuccessful candidates and thereupon some enquiry was conducted by 4th respondent-The District Educational Officer. Consequently, proceeding dated 19-9-2003 cancelling the entire process of selection of candidates came to be issued by the District Educational Officer. The relevant portion of the proceeding dated 19-9-2003 reads as follows:

> "*The Committee has also violated the instructions (7)(),(h) and (i) of the Commissioner & Director of School Education's Procs. Rc.No.1000/B1-3/2002, dated 24-9-2002, the selection committee has not published the key on the Notice Board after the written test is over and before valuation starts and all the candidates have not been called for the Oral Test/Interviews, but the Committee in contrary to the above instructions, conducted the interviews in the ratio of 1:3. As a result of this arbitrary Act, many candidates have deprived the marks of oral test.*
>
> *The receipt of the proceedings should kindly be acknowledged by return of post.".*

4. Subsequently, the proceedings of the District Educational Officer came to the challenged by the writ petitioner by filing W.P.No.21709 of 2003. Some other writ petitions came to be filed by both successful and unsuccessful candidates in the selection. This Court disposed of the batch of the writ petitions being W.P.Nos. 21183, 21709, 22190 and 25027 of 2003 by order dated 24-08-2004. The operative portion of the order reads as follows:

> "*Under the Rules, the District Educational Officer is not the approving authority with regard to the appointment of teaching staff and, therefore, I am of the view that the order of the District Educational Officer, dated 19-9-2003 cancelling the written test conducted on 12-9-2003 is illegal and without jurisdiction. Accordingly, the said order is set aside and the management of M.B. Schools is directed to send proposals for necessary approval in respect of selected candidates who are said to have been selected pursuant to the written test held on12-9-2003 to the Regional Joint Director of School Education, Zone-VI, Kachiguda, Hyderabad, if not already sent, within fifteen days from the date of receipt of a copy of this order. If any proposals are already sent and the same are received, the Regional Joint Director is directed to pass*

appropriate orders within a period of four weeks from the date of receipt of a copy of this order. It is made clear that if the selections are in violation of the rules, it is open for the competent authority to take appropriate decision.

The writ petitions are accordingly disposed of. No order as to costs."

5. In pursuance of the orders passed by this Court, the Regional Joint Director of School Education, Hyderabad considered the material brought on record afresh and issued proceedings Rc.No.9131/A2/2004, dated 20-3-2005. Paras 4 and 5 of the proceedings of the Regional Joint Director of School Education reads as follows:

"The D.Y.E.O., Mahabubnagar who is the nominee of D.E.O. has replied in her written statement that the management has not co-operated till the last minute in spite of her repeated telephone calls. Even at the eleventh hour also she says that, she has proposed for the postponement of examination but the management has not agreed to her proposal. Further she says that the candidates who gathered at the examination center have noisily and vociferously demanded for the immediate conduct of examination, as the conduct of examination was postponed previously on 5-8-2003. At last the examination was conducted with the above irregularities.

The member from the management side has also accepted the non-involvement of the DEO's nominee and subject experts, inserting of question paper and he has also replied that he has not received any orders for appointing him as committee member and participated in selection process on the oral instructions of Secretary, which is also highly irregular"

In view of the above, the proposals for approval of the selection in respect of Management of the M.B.Schools, Mahabubnagar are not feasible for consideration since the selection committee has violated the rules and regulations issued by the Govt. and C & DSE A.P. , Hyderabad and also lapses in selection process. Hence, the proposals are hereby rejected and returned

The D.E.O. Mahabubnagar has requested to take action accordingly".

Proceedings of the Regional Joint Director of School Education are under challenged in the writ petition.

6. B.Eranna came on record as Respondent No.5 as per orders in W.P.M.P.No. 30342 of 2005 dated 10-11-2005.

7. V.S.Bhargava has sworn to the counter affidavit filed on behalf of the respondents No. 1 to 4. It is stated in the counter affidavit that as per the proceedings of the 1st respondent (1000/B1-3/2002, dated 24-9-2002) the 4th respondent vide Pro. RC.No. C1/11609/2003, dated 5-9-2003 appointed subject experts for preparation of question paper as per rules to fill up the vacant Aided teaching and non-teaching posts in Aided M.B.Schools in the District under the Supervision of the D.E.Os nominee (Dy. Educational Officer, Mahabubnagar). The following are appointed as subject experts.

Sl. Name of the Officer concerned Subject

No. designation and place of working Expert

1. Sri Narasa Raju, HM, Govt. H.S. Maths

Police, Line, Mahabubnagar.

2. Sri Venkateshwar Goud, School Asst. Social

3. Sri Venkata Chary, TP. Gr.I Telugu

4. Sri J.Venkata Swamy, DM, Govt. Basic Drawing Master

Practisinsg H.S. , Mahabubnagar.

The District Education Officer advised the nominee in all aspects in conducting the written test and interview. Where as the management violated the procedure and issued the question papers which were prepared with their private subject experts but not by the subject experts sponsored by the District Educational Officer-4th respondent. I deem it appropriate to refer relevant portion of the counter affidavit and it is thus;

> "*It is true among the (4) subject experts mentioned above Sl.No. 2 was not attended the schedule. The 4th respondent advised the nominee in all aspects in conducting the written test and interview conducting peacefully, where as the management violated the procedure and issued the question papers which were prepared with their private subject experts*

but not by the subject experts sponsored by the 4th respondent for which I am here with enclosing the orders copies of individuals subject experts for your perusal. Further, submit that the following are the subject experts for written test for the various posts, sponsored by the department only.

1. *Sri Sudhakar Reddy, School Assistant, Govt. High School, Kummarwadi, Mahabubnagar.*
2. *Sri Vijaya Kumar, School Assistant, Govt. High School, Police Line, Mahabubnagar.*
3. *Sri Rajasekhar Reddy, School Assistant, Govt. High School, Police Line, Mahabubnagar.*
4. *Sri Kumara Swamy, School Assistant, Govt. High School, Shahbazar, Mahaubnagar.*

The following are the Officers executed the interview of the different posts.

1. *Smt. O.Prabhavathamma, Dy. Ednl. Officer, Mahabubnagar Nominee of the Dist. Educational Officer.*
2. *Sri Solomon, Chairman, M.B. Management.*
3. *Sri George, Secretary, M.B Management.*
4. *Sri B. Ramulu, Head Master, Aided M.B.H.s. Gadwal.*
5. *Sri Narasa Raju, Head Mater, Govt. High School, Police Line Mahabubnagar.*
6. *Sri Venkata Charyulu, TP. Gr.I Govt. H.S Kumarwadi, Mahaubnagar.*
7. *Sri Venkata Swamy , DM. Govt. Basic Prac. H.. Mahabubnagar.*

In reply to para No.7. The written and Oral test are conducted on 12-9-2003 from 10-00 a.m. to 12-30 p.m. and 2-00 p.m. to 4-00 p.m. on the threatening of the management, the sponsored subject experts by the respondent were simply signed on the selection list which contained the marks secured by the candidates in written test and interview. This process was not stopped by the nominee of the D.E.O. As per the DEOs nominee's explanation LR. No. 83/2003, dt. 15-9-2003 where in she stated that regarding question papers he ha discussed with the Secretary M.B. Management, Mahabubnagar.

I was argued with him where are the Government orders to prepare the question papers from the management side only.

It clearly indicates that the management has not accepted the question papers prepared by the subject experts sponsored by the 4th respondent and arised leakage of question papers.

In reply to Para NO.8 by violating the orders NO. C1/11609/2002, dated 16-9-2003 and 24-9-2003 of the 4th respondent the petitioner continuing the selected candidates on violation of Rules and permitted them to work in their area of operation of schools with effect from 15-9-2003 without approval of the competent authority concerned."

8. It is stated in the counter affidavit of 5th respondent that he has been qualified in the written examination for the post of Drawing Teacher. Because of the petitioner conducting the interviews contrary to the Rules, the 4th respondent cancelled the selection test. He urged that he is entitled to be appointed for the post he applied. Para 7 of the counter affidavit reads as follows:

"*I submit that as I am successful in the written test conducted by the Petitioner, I am entitled for my selection, but during the interviews, the Petitioner herein has committed irregularities in the selection process and that is the reason why the same is being cancelled. Hence, as I have been participated in the earlier selections, in the event if the Petitioner conducts selection afresh, I must be given an opportunity I am becoming over age by the time Petitioner conduct selections afresh. Hence, as I am being a party to the earlier judgment of this Hon'ble Court and also as I am a party to the selections conducted by the Petitioner, I am necessary party to the impleaded as Respondent in the present Writ Petition. As the Petitioner fails to implead me as a Party Respondent, I am constrained to file implead petition along with this Counter affidavit.".*

9. Heard learned counsel for the petitioner and learned Government Pleader for School Education appearing for Respondents No. 1 to 4.

10. Learned counsel appearing for the petitioner submits that the petitioner institution is a minority institution and the rights guaranteed to the institution are protected under Article 30 (1) of the Constitution. He further submits that selection process has been conducted in accordance with the Rules and therefore, the

selection list sent by the petitioner institution is required to be approved. A further submission has been made that the Enquiry initiated by the District Collector is motivated one and therefore, the entire process in pursuance of the initiation made by the District Collector is null and void. In support of his submission reliance has been placed on the decision of Division Bench of this Court in W.P.Nos. 11750 of 2000 (Modern High School Zamisthanpur, Musheerabad, Hyderabad Vs. Government of A.P. rep. by the Secretary, Education Department, Secretariat, Hyderabad and others). In the above referred judgment violation of Rule 2-A which has been inserted in Rule 12 by way of G.O.Ms.No.76, dated 2-11-1999 came up for consideration. On elaborate discussion it has been held in the cited decision as follows:

> "*The Supreme Court agreed with the view of the High Court. The Madhya Pradesh High Court found that, all that sub-clause (a) had done was that it enabled the State Government to fix the scales of pay and laid down the general mode or procedure for recruitment of teachers and other employees. It did not enable any interference by the Government in the choice of personnel selected by that mode which continues to remain with the management of the institution. Therefore, in our view this judgment has not at all altered the law laid down by the nine Judges Bench of the Supreme Court to which a reference has been made herein above.*
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> *Now, what is done by amendment of rule 12 is that the power of appointment itself is taken away by the State Government from the managements of the minority institutions and even the Government ha restricted its powers of appointment only to the extent of surplus staff. The net result would be that, neither the State Government nor the institutions would have the choice to take up the best amongst the available qualified candidates. Ex-facie the amendment is ultra vires to Article 30(1) of the Constitution of India and therefore, is struck down".*

11. Learned Government Pleader for School Education appearing for respondents No. 1 to 4 submits that since certain irregularities came to be noticed in the process of selection, an enquiry has been initiated and basing the enquiry report, selection list came to be cancelled and therefore, respondents cannot found fault. He further submits that even if the petitioner is aggrieved by the order impugned in the writ petition, a remedy by way of appeal under Section 89 of the A.P. Education Code is proceeded and therefore, the writ petition is misconceived. Various other contention

have been raised which are not required to be dealt with in view of the orders proposed to be passed.

12. It is apposite to refer Section 89 of the Andhra Pradesh Education Code, 1982 which reads as follows:

> "Sec. 89. Appeals:- Save as otherwise provided in this Act,-
>
> a. *any person aggrieved by an order passed by an Officer or Authority other than the Director under this Act may, within thirty days from the date of communication of such order, appeal to the Director;*
>
> b. *any person aggrieved by an order passed by the Director under this Act other than an order passed by him under clause (a) may, within sixty days from the date of the communication of such order, appeal to the Government".*

13. Undisputedly, the order impugned in the writ petition came to be passed by the Regional Joint Director of School Education. Since a statutory remedy is available to the petitioner, the petitioner has to exhaust the said remedy before invoking the extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India.

14. In the result, the writ petition is disposed of giving liberty to the petitioner to file an appeal as provided under Section 89 of the Andhra Pradesh Education Code, 1982 within thirty days from today and on such appeal being filed by the petitioner, the concerned authority has to dispose of the same within four weeks thereafter. No order as to costs.

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Justice B.Seshasayana Reddy

30th December, 2005

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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